-PS-O-

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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CYNTHIA BOCHENSKI,

                Plaintiff,

             -v-

MOOG, INC.,

                Defendant.

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DECISION and ORDER
04-CV-954S

On December 3, 2004, this Court (Hon. Richard J. Arcara), entered an Order granting Plaintiff's application to proceed *in forma pauperis*, pursuant to 28 U.S.C. § 1915, and directing the Clerk of the Court to cause the United States Marshal to serve a copy of the Summons and Complaint on Defendant Moog, Inc. (Docket No. 3). A Summons was issued on December 7, 2004 and, on that same date, the Clerk of the Court forwarded the Summons and Complaint to the United States Marshal for service.

On May 3, 2005, the Court issued an Order to Show Cause directing Plaintiff to show cause why the Complaint should not be dismissed, pursuant to Fed.R.Civ.P. 4(m), for failure to serve the Summons and Complaint within 120 days. (Docket No. 4).

On May 19, 2005, Plaintiff filed a Motion requesting an extension of time for the United States Marshal to serve the Summons and Complaint on defendant as previously ordered. (Docket No. 5). Along with the Motion, Plaintiff filed an Affidavit in support of the Motion and in response to the Court's Order to Show Cause. (Docket No. 6). In the Affidavit, she notes that she received the Court's Order directing the Clerk of the Court to

direct the United States Marshal to serve the Summons and Complaint and submits that she has shown good cause for an extension of time to have the United States Marshal serve the Summons and Complaint. The Court agrees and will therefore direct the United States Marshal to re-serve the Summons and Complaint on the Defendant.

Once a plaintiff is granted permission to proceed *in forma pauperis*, the responsibility for effecting service of the summons and complaint shifts from the plaintiff to the court. *See* 28 U.S.C. § 1915(d); *Wright v. Lewis*, 76 F.3d 57, 59 (2d Cir. 1996). Here the Court granted Plaintiff permission to proceed *in forma pauperis* and, therefore, it was the Court's responsibility to effect service upon Defendant. There is no evidence in the file or on the Docket Sheet that the United States Marshal attempted to serve the Summons and Complaint or, if they did, that Defendant returned an acknowledgment of service pursuant to N.Y.C.P.L.R. § 312-a.[1]

Accordingly, this Court finds that there is "good cause" to extend the time for the United States Marshal to serve the Summons and Complaint, *see Romandette v. Weetabix*, 807 F.2d 309, 311 (2d Cir. 1986) (interpreting Rule 4(j), the predecessor subdivision to Rule 4(m)); *Armstrong v. Sears*, 33 F.3d 182, 188 (2d Cir. 1994); *see also Byrd v. Stone,* 94 F.3d 217, 219 (6th Cir.1996) (the district court's failure to effectuate service on behalf of an *in forma pauperis* plaintiff constitutes good cause), and Plaintiff's Motion is granted. The Clerk of the Court is again directed to cause the United States

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[1]Fed.R.Civ.P. 4(e)(1) and (h) provide that service may be made pursuant to the law of the state in which the Court sits, and the United States Marshal in this District generally serves the Summons and Complaint by mail pursuant to N.Y.C.P.L.R. § 312-a, which provides that service is not complete until defendant returns an acknowledgment of service to the sender, which is required to be done within 30 days from the date of receipt of the summons and complaint.

Marshal to re-serve the Summons and Complaint on Defendant and the time to serve the

Summons and Complaint on Defendant is extended an additional 120 days from the date

of entry of this Order.

IT IS HEREBY ORDERED, that the United States Marshal's time in which to serve

the Summons and Complaint is extended an additional 120 days from the date of entry of

this Order, and that the Clerk of the Court is directed to cause the United States Marshal

to re-serve the Summons and Complaint on Defendant, Moog, Inc.

SO ORDERED.

Dated: May 27, 2005
             Buffalo, New York

                                             /s/William M. Skretny
                                             WILLIAM M. SKRETNY
                                             United States District Judge